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**JUN 24 2009**

**OFFICE OF PETITIONS**

In re Application of	:
Valerie Legrand, et. al.	:
Application No. 10/826,690	: DECISION ON PETITION
Filed: April 19, 2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 022290.0116C1US	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed on April 1, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the present petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant petition fails to comply with (1) above.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit an Application Data Sheet (ADS) or a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).

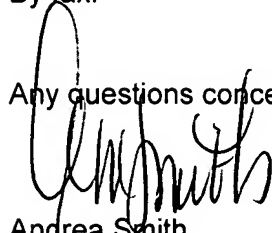
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3226.



Andrea Smith  
Petitions Examiner  
Office of Petitions